

7-1-2005

# Maine Labor Relations Board Annual Report, Fiscal Year 2005

Maine Labor Relations Board

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## Recommended Citation

Maine Labor Relations Board, "Maine Labor Relations Board Annual Report, Fiscal Year 2005" (2005). *Labor Relations Board Documents*. Paper 29.  
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ANNUAL REPORT  
MAINE LABOR RELATIONS BOARD

Fiscal Year 2005

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1) (1988).

Introduction

During the past year, the Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, demand for the Board's services was generally lower than in the previous year. The defining feature of the reporting period was the high degree of uncertainty in public finance. The tax cap referendum was pending for the first four months of the year and, although rejected by the voters in November, continued regard for tax relief and spending caps were of concern to both labor and management.

Members of the Board are appointed by the Governor, confirmed by the Legislature, and serve four-year terms, with the term of office of each primary member expiring on September 30 of successive years. The terms of the alternate members expire at the same time as that of their respective primary member. Public Chair Peter T. Dawson of Hallowell, Employee Representative Carol B. Gilmore of Charleston, and Employer Representative Karl Dornish, Jr., of Winslow continued to serve throughout the year. Alternate Chairs Jared S. des Rosiers of Falmouth and Pamela D. Chute of Brewer, Alternate Employee Representatives Wayne W. Whitney of Brunswick and Robert L. Piccone of Portland, and Alternate Employer Representatives Edwin S. Hamm of Portland and Richard L. Hornbeck of Bowdoinham all continued to serve in their respective capacities.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff is the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help, and making appropriate referrals.

The Board's web site continued to be the prime source for research of Board precedent. The site is equipped with a search engine and contains an extensive database of the Board's prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board's decisions. Access to this case law helps public employers and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site also includes links to the statutes administered by the Board, the complete text of the Board's Rules and Procedures, the Board's forms, a bulletin board of current activities, and links to other state and federal labor relations agency sites. Since its inception the web site has been maintained and updated by Board staff. At the end of this fiscal year, the Board has undertaken a project in collaboration with the Office of the Chief Information Officer to redesign the web site in order to bring it into compliance with the State accessibility standards. The agency has solicited comments and ideas from our client community and will incorporate such input in the upgrade process. Over the years, the web site has been highly praised by the labor-management community.

#### Legislative Matters

Three bills of interest to the Board were enacted by the Legislature and became law this year. The first, L.D. 1123, was enacted as amended and became law as Chapter 324 of the Public Laws of 2005. As originally proposed, this bill would have provided that the terms of collective bargaining agreements would remain in effect until a successor agreement was reached by the parties. Under existing law, after a collective bargaining agreement expired, the static status quo had to be maintained regarding the mandatory subjects of bargaining until a successor agreement was reached or the statutory impasse resolution procedures were exhausted. This duty was enforced through a prohibited practice proceeding before the Labor Board. A group of interested parties consisting of representatives of public sector employers and bargaining agents developed an alternative to the bill. While consensus was not reached on the merits of the substitute proposal, there was general agreement that it was more acceptable than the original. As amended, the bill continues the grievance arbitration provision of the expired agreement for the purpose of enforcing continuation of the static status quo until the successor

agreement is reached. If there is a dispute over which provisions of the expired agreement are enforceable by virtue of the static status quo doctrine, such disputes will be resolved by the Labor Board before the merits of the substantive dispute are decided by the grievance arbitrator selected by the parties.

The second bill, L.D. 467, was enacted and became law as Chapter 381 of the Public Laws of 2005. This bill designates the home addresses and telephone numbers of all public employees as confidential and not available to the public pursuant to the Public Records Law. Bargaining agents require information, potentially including unit employees' home contact information, in order to carry out their statutory responsibilities and the Board needs this information to conduct secret ballot representation elections. The obligation of public employers to supply information to bargaining agents and to the Board arises by operation of the applicable labor relations law and is not affected by changes to the Public Records Law. The Board offered written testimony, neither for nor against the bill, clarifying its position on this issue.

L.D. 981 (enacted and became law as Chapter 279 of the Public Laws of 2005) changed the name of the Governor Baxter School for the Deaf to the Maine Educational Center for the Deaf and Hard of Hearing, while retaining the historic name for the center school on Mackworth Island. The name change is intended to more accurately reflect the state-wide mission of the organization. Section 15 of the Law amends 26 M.R.S.A. § 962 (7) to include The Maine Educational Center for the Deaf and Hard of Hearing within the statutory definition of those public employers covered by the Municipal Public Employees Labor Relations Law.

The executive director presented testimony on three additional bills that would have impacted the Board's jurisdiction. The Board staff monitored 7 additional bills, attending public hearings and work sessions, and otherwise assisting Legislative committees in their consideration of matters that might impact public sector collective bargaining or agency operations.

### Bargaining Unit and Election Matters

During fiscal year 2005, the Board received 21 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 24 of these filings in FY 04, 23 in FY 03, 19 in FY 02, 21 in FY 01 and 34 in FY 00. Of the 21 FY 05 filings, 8 were for municipal or county government units, 7 for educational units, and 6 concerned State Executive Branch employees. The unit agreements were filed by the following employee organizations:

<u>Maine Education Association/NEA</u> <sup>1</sup>	7 agreements
(Freeport School Secretaries)	
(MSAD #47 Support Staff)	
(MSAD #29 Bus Drivers/Custodians)	
(MSAD #29 Cafeteria Staff)	
(MSAD #70 Ed Techs & Secretaries)	
(Whitefield ESP Unit)	
(Chelsea ESP Unit)	
<u>Maine State Employees Association</u>	6
(State Supervisory Services Unit - 6)	
<u>AFSCME Council 93</u>	3
(County of Cumberland Jail Division Unit-2)	
(County of Cumberland Communications Unit)	
<u>Teamsters Union Local 340</u>	3
(City of Saco Supervisory Unit)	
(Portland Housing Authority Supervisory Unit)	
(Old Town Public Works Unit)	
<u>International Association of Fire Fighters</u>	1
(Veazie Fire Fighters)	
<u>Richmond Employees Association</u>	1
(Richmond Municipal Employees)	

Of the 21 filings, 9 were for new units and 12 were for changes to existing units.

Eight (8) unit determination or clarification petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 05: 6 were for determinations and 2 were for clarifications. None of the new unit petitions actually went to hearing. Agreements were reached in 3 cases, 1 was deemed sufficient, 1 was withdrawn and 3 are pending. Once a unit petition and response are filed, a member of

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<sup>1</sup>While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 37.5% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 10 unit petitions filed in FY 04, 15 in FY 03, 14 in FY 02, 10 in FY 01 and 13 in 00. The unit determination/clarification requests were filed by the following employee organizations:

<u>Maine Education Association/NEA</u>	4 petitions
(MSAD #29 Cafeteria Staff)	
(Whitefield ESP Unit)	
(MSAD #29 Ed Techs & Secretaries)	
(MSAD #32 Teachers Unit)	
<u>Teamsters Union Local 340</u>	2
(Portland Housing Authority Administrative & Clerical Supervisory Unit)	
(Ogunquit Police Lieutenants)	
<u>Int'l. Assn. of EMT's &amp; Paramedics/NAGE</u>	1
(AMS Ambulance EMT's & Paramedics Unit)	
<u>Maine State Employees Association</u>	1
(State Pro-Tech Unit)	

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 05 there was 1 voluntary recognition filed, involving the following employee organization:

<u>International Association of Fire Fighters</u>	1 voluntary recognition
(Veazie Fire Fighters)	

Nine (9) bargaining agent election requests were filed in FY 05; 9 elections were actually held, including matters carried forward from FY 04, 2 requests were withdrawn and 2 election matters are pending. The bargaining agent election petitions filed this year involved the following employee organizations:

<u>Maine Education Association/NEA</u>	6 petitions
(Freeport School Secretaries Unit)	
(MSAD #29 Bus Drivers/Custodians)	
(MSAD #29 Cafeteria Staff)	
(Whitefield ESP Unit)	
(MSAD #70 Ed Techs & Secretaries)	
(Chelsea ESP Unit)	

<u>Teamsters Union Local 340</u> (Portland Housing Authority Administrative & Clerical Supervisory Unit) (Ogunquit Police Lieutenants)	2
<u>Int'l. Assn. of EMT's &amp; Paramedics/NAGE</u> (AMS Ambulance EMT's & Paramedics Unit)	1

In FY 04, there were 2 voluntary recognitions filed, 10 bargaining agent election requests received, and 6 elections held.

In addition to representation election requests, the Board received 2 requests for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. The results of the decertification/certification petitions were as follows:

<u>Petitioner</u> (bargaining unit)	<u>Incumbent Agent</u>	<u>Prevailed</u>
Teamsters Union Local 340 (Rockport Police Unit)	Rockport Police Officers Assn.	Teamsters
Maine Association of Police (Madison Police Unit)	Teamsters Union Local 340	MAP

The Board received 3 straight decertification petitions in FY 05. No new union is involved in these petitions; rather, the petitioner is simply attempting to remove the incumbent agent. One (1) election was held, 1 case is pending and 1 was dismissed as untimely. The decertification petitions filed this year and the results are as follows:

<u>Employee Organization</u>	<u>Unit</u>	<u>Outcome</u>
AFSCME Council 93	Bangor Airport Ramp Supervisors & Attendants	Dismissed
Maine State Employees Assn.	State Pro-Tech Unit	Pending
Teamsters Union Local 340	Waterville Area Communication System Dispatchers	No Rep.

No straight decertification petitions were received in FY 04. In addition to the decertification election activity this year, 1 disclaimer of interest was filed and granted. Disclaimers arise when a bargaining agent no longer wishes to represent a bargaining

unit. In such cases, the bargaining agent files a request to disclaim interest with the agency, which gives notice of such intent to the employees in the unit at issue and provides them with an opportunity to object to the request. If no employee objects, there is no collective bargaining agreement in effect, and the bargaining agent has no outstanding financial obligations for bargaining or contract administration activities regarding the unit, the disclaimer will be granted and the employee organization will not be permitted to attempt to represent the employees in the disclaimed bargaining unit for a one-year period from the granting of the disclaimer request.

There were 6 election matters carried over from FY 04. Consequently, there were 20 such matters requiring attention during the fiscal year; this compares with 23 in FY 04, 22 in FY 03, 18 in FY 02, 17 in FY 01 and 30 in 00.

### Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

The number of new mediation requests received during the fiscal year decreased. There were 55 new requests filed this year compared with 65 last year. In addition to the new mediation requests received during FY 05, there were 23 matters carried over from FY 04 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year was 78, down from 97 in FY 04. During the downturn in the regional economy in the early 1990's, most parties were opting for one-year agreements, hoping that more favorable conditions would prevail the following year. As a result, many more agreements expired in FY 93 and FY 94 than would normally be expected. Beginning in mid-FY 1994, more parties resumed negotiating multi-year agreements. The decreased demand for mediation services this year is the result of two major factors. During the first four months of the year, a tax cap referendum was pending and, unsure of what resources would be available to fund any agreements, many parties deferred negotiations until the referendum was



resolved. As a result, fewer cases became “ripe” for mediation. Second, as a consequence of having negotiated multi-year agreements last year, fewer collective bargaining agreements expired this year. In addition, uncertainty regarding the impact of spending caps in the future together with significant increases in health insurance premiums lead many parties to agree to one-year extensions, rather than engaging in comprehensive negotiations. All of these developments suggest that a greater than normal number of agreements will be expiring next year, resulting in increased demand for mediation services.

This year the settlement rate for cases where mediation was concluded, including carryovers from FY 04, increased somewhat. This year's settlement rate was 88.5%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to this year's rate, with a mean of 76.75%. Anecdotal evidence from the mediators and partisan representatives suggests that uncertainties generated by the tax cap referendum and regarding the impact of spending caps in the future coupled with significant increases in health insurance premiums resulted in a more difficult bargaining climate this year. Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the twelve-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period.

No requests for preventive mediation services were received this year. Interest in non-confrontational, interest-based negotiations in the labor-management community has waned in the last three years, despite the effectiveness of the process in achieving settlements (56 settlements in 58 cases). In fact, prior to FY 02, all of the preventive mediation efforts had been successful. Preventive mediation is only undertaken upon the joint request of the parties; therefore, the fact that such services were not requested this year may be a negative development or it may just indicate parties' belief that their differences can be best addressed through traditional bargaining.

Fact finding is the second step in the three-step statutory dispute resolution process. In Fiscal Year 2005, 13 fact-finding requests were filed. Although the same number of requests were received in both FY 05 and FY 04, the number this year represents an increase from last year's level, given the number of cases that went to

mediation. Considering all cases, including carryovers from FY 2004, 8 petitions were withdrawn or otherwise settled, 8 requests went to hearing, and 2 petitions are pending hearing. Last year 7 fact-finding hearings were held. The following employee organizations filed requests for fact-finding services this year:

<u>Maine Education Association</u>	7 requests
(MSAD #47 Teachers Unit)	
(MSAD #25 ESP Unit)	
(MSAD# 72 Teachers Unit)	
(CSD #9 Teachers Unit)	
(Raymond School Support Staff Unit)	
(Old Orchard Beach ESP Unit)	
(MSAD #3 Transportation Unit)	
<u>Teamsters Union Local 340</u>	3
(Livermore Falls Police Unit)	
(Livermore Falls Dispatchers Unit)	
(Livermore Falls Public Works Unit)	
<u>Maine Association of Police</u>	2
(Westbrook Police Unit)	
(Old Orchard Beach Police Unit)	
<u>American Federation of Teachers</u>	1
(Sanford Teachers Unit)	

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non-monetary issues. Salaries, pensions and insurance issues are subject to interest arbitration, but an award on these matters is only advisory. In recent years the Board has received few interest arbitration requests. None have been received in the last three years. One was filed in FY 01, none in FY 00, 2 in FY 99, and 2 in FY 98.

The various labor relations statutes do not require parties to notify the Board when they are invoking mandatory interest arbitration. The statutes do require that arbitration awards be filed with the Board; however, they usually are not. This year, one notice of interest arbitration was received. While we assume that this was the sole interest arbitration award in the public sector during the year, it may be that parties have simply failed to provide notification to the Board.

## Prohibited Practices

One of the Board's main responsibilities in administering the public sector collective bargaining process is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board in such matters. Twelve (12) complaints were filed in FY 05. This represents a decrease over the FY 04 level. For the last six years, including the current year, the number of complaints filed each year has fluctuated from a low of 12 to a high of 26, with the mean being 19.67. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 12 complaints filed in FY 05, there were 11 carryovers from FY 04, compared with 16 complaints and 19 carryovers last year. Board panels conducted 5 evidentiary hearing days during the year, compared with 12 in FY 04. The Board issued formal Decisions and Orders in 6 cases (one on the basis of a stipulated record, hence no evidentiary hearing was required). One Settlement Agreement was signed on the day of hearing. Board chairs, sitting as prehearing officers, held conferences in 9 cases, compared with 10 in FY 04. One (1) case is being held in abeyance. Nine (9) complaints were dismissed or withdrawn at the request of the parties. Five (5) complaints await prehearing and/or hearing, and 1 case is pending Board decision. One (1) case was dismissed by the executive director but reinstated on appeal to the Board.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives. Continuing a development introduced in FY 96, the services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing.

Prohibited practice complaints, with the respondent noted in parenthesis, were filed by the following this year:

<u>AFSCME Council 93</u>	2 complaints
(Cumberland County, et al.)	
(Mt. Valley Development Center, et al.)	
<u>Maine State Employees Association</u>	2
(Maine Legislative Council)	
(Maine Maritime Academy)	

<u>Teamsters Union Local 340</u>	2
(Washington County)	
(Wells)	
<u>County Patrol Association</u>	1
(York County)	
<u>Granite City Employees Association</u>	1
(Hallowell)	
<u>Individuals</u>	1
(Auburn)	
<u>International Association of Firefighters</u>	1
(Gardiner)	
<u>Maine Education Association/NEA</u>	1
(MSAD #46 Board of Directors)	
<u>Sanford Federation of Teachers</u>	1
(Sanford School Committee)	

### Appeals

Two related Board decisions, *Maine State Employees Association v. York County*, No. 04-04 (Oct. 8, 2004), and *M.S.E.A. and York County*, No. 04-UDA-01 (Oct. 8, 2004), were appealed to the Superior Court, *York County v. M.L.R.B. and M.S.E.A.*, Nos. AP-04-070 & -071 (Me. Super. Ct., York Cty.), but were settled by the parties on the day of the oral argument on the merits of the appeal. The two cases both arose from issues in one relatively small office of the employer, the Probate Office. There was a substantial amount of litigation going on during the time the Board dealt with these cases that involved York County, the York County Probate Office and the Register of Probate, some of which was appealed to the Law Court. Although this litigation did not directly involve the Board, the issues presented were somewhat related. The two cases before the Board were a prohibited practice case and an appeal to the Board of a unit determination matter. The Board issued both decisions on the same day so that the appeals could more easily be processed in tandem. After consultation with the Board Counsel and the Superior Court Justice, the parties were able to effect a settlement of both cases.

An appeal to Superior Court was taken from the Board decision in *Sharron V.A. Wood v. Maine Community College System and Maine Education Association*, No. 03-06 (Me.L.R.B. Apr. 21, 2005), and is still pending. That case, brought by a probationary employee whose individual employment contract was not renewed, charged interference, restraint and coercion against the employer, the Maine Community College System, and

violation of the duty of fair representation against the individual's bargaining agent, the Maine Education Association. The Board held that neither respondent had violated the law.

### Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

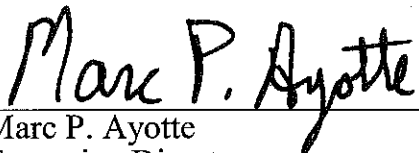
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Unit Determination/ Clarification Requests Number filed--	13	-23.1% 10	+40% 14	+7% 15	-33% 10	-20% 8
Agreements on Bargaining Unit (MLRB Form #1) Number filed--	34	-38.2% 21	-9.5% 19	+21% 23	+4.3% 24	-12.5% 21
Voluntary Recognitions (MLRB Form #3) Number filed--	12	-41.7% 7	-57.1% 3	+167% 8	-75% 2	-50% 1
Bargaining Agent Election Requests Number filed--	12	-50% 6	+50% 9	+22% 11	-9.1% 10	-10% 9
Decertification Election Requests Number filed--	1	+100% 2	-50% 1	-100% 0	0% 0	+300% 3
Decert./Certification Election Requests Number filed--	6	-67% 2	+150% 5	-40% 3	+233% 10	-80% 2
Mediation Requests Number filed--	73	-16.4% 61	-11.5% 54	+18.5% 64	+1.6% 65	-15.4% 55
Fact-Finding Requests Number filed--	15	-13.3% 13	+7.7% 14	+64% 23	-43.5% 13	0% 13
Prohibited Practice Complaints Number filed--	26	-7.7% 24	-29.2% 17	+35.3% 23	-30.4% 16	-25% 12

The above table indicates that the demand for the Board's different services declined during the fiscal year, reflecting the uncertainties in public sector finance and structure this year. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and fire fighter units, predated the establishment of the agency. As the number of organized employees approaches the universe of those eligible, the number of new units created each year will decline. As predicted, there was a decrease in organizational activity this year; however, there are more units now than ever before. A larger number of units means more requests for changes in unit composition, more elections to change or oust bargaining agents, a greater potential for prohibited practice complaints, and increased demand for dispute resolution services in the future.

During FY 05, public sector labor-management relations in Maine continued to mature. Parties continue to rely on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of more mature labor relations is evidenced by the strong demand for mediation services and the continued willingness by the parties to settle prohibited practice complaint cases. In sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 1st day of July, 2005.

Respectfully submitted,

  
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Marc P. Ayotte  
Executive Director  
Maine Labor Relations Board